

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**RUSSELL ENERGY, INC.,
also known as Russell
Energy Partners, Inc.**

PLAINTIFF

v.

CAUSE NO. 1:18cv89-LG-RHW

**RONALD RUBRECHT;
DREW GARLAND; TURBINE
DIAGNOSTIC SERVICES, INC.;
GARLAND BROTHERS, INC.;
GEORGIA RENEWABLE
POWER, LLC; UNKNOWN
PURCHASER; UNKNOWN
JOHN AND JANE DOES A, B,
C; and OTHER UNKNOWN
CORPORATE ENTITIES X, Y, Z**

DEFENDANTS

**ORDER GRANTING TURBINE DIAGNOSTIC SERVICES'
MOTION TO DISMISS AND FINDING AS MOOT
RONALD RUBRECHT'S MOTION TO DISMISS**

BEFORE THE COURT is the [25] Motion to Dismiss for Failure to State a Claim filed by the defendants Ronald Rubrecht and Turbine Diagnostic Services. Rubrecht and Turbine seek dismissal of Russell Energy, Inc.'s conspiracy to defraud claim for failure to meet the particularity requirements of Fed. R. Civ. P. 9(b). The parties have fully briefed the Motion. After reviewing the submissions of the parties, the record in this matter, and the applicable law, the Court finds that Turbine's Motion to Dismiss should be granted, but Rubrecht's Motion is moot because the Court has determined in a separate opinion that the Court cannot exercise personal jurisdiction over Rubrecht.

BACKGROUND

Russell filed this lawsuit, alleging that the defendants improperly used confidential information obtained from Russell to orchestrate the sale of a generator. Russell attempts to assert the following claims: breach of confidentiality, breach of non-circumvention, breach of non-competition, breach of non-disclosure, breach of implied warranty of good faith and fair dealing, civil conspiracy to defraud, and unfair and deceptive acts. Turbine filed the present Motion to Dismiss seeking dismissal of the alleged civil conspiracy to defraud claim pursuant to Fed. R. Civ. P. 9(b).

DISCUSSION

A motion seeking dismissal for failure to state fraud with particularity is treated as a motion to dismiss for failure to state a claim. *See Flaherty & Crumrine Preferred Income Fund, Inc. v. TXU Corp.*, 565 F.3d 200, 206 (5th Cir. 2009). To survive a motion to dismiss filed pursuant to Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b). The Fifth Circuit “interprets Rule 9(b) strictly, requiring the plaintiff to specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent.” *Flaherty*, 565 F.3d at 206-07; *see also Williams v. WMX Techs.*,

Inc., 112 F.3d 175, 179 (5th Cir. 1997) (holding that a party alleging fraud must, at a minimum, plead the “who, what, when, where, and how” of the alleged fraud).

In support of its alleged civil conspiracy to defraud claim, Russell alleges, “Defendants’ actions amounted to a conspiracy to defraud Plaintiff when both the seller’s agent and the buyer’s agent agreed to a common plan to complete the sale of the [g]enerator without Plaintiff.” (Compl. 9, ECF No. 1-1.) Russell does not identify or describe any fraudulent statements or provide any information regarding the alleged fraud that forms the basis for its civil conspiracy to defraud claim. Therefore, Russell’s civil conspiracy to defraud claim must be dismissed. However, Russell is granted leave to amend its complaint to attempt to state a civil conspiracy to defraud claim against Turbine.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the [25] Motion to Dismiss for Failure to State a Claim filed by Turbine Diagnostic Services, Inc., is **GRANTED**. The plaintiff, Russell Energy, Inc. a/k/a Russell Energy Partners, Inc., is granted thirty days from the date of this Order to file an amended complaint.

IT IS, FURTHER, ORDERED AND ADJUDGED that if Russell Energy, Inc. a/k/a Russell Energy Partners, Inc., fails to file an amended complaint against Turbine Diagnostic Services, Inc., within thirty days of the date of this Order, Russell’s civil conspiracy to defraud claim against Turbine may be dismissed without further notice.

IT IS, FURTHER, ORDERED AND ADJUDGED that the [25] Motion to Dismiss for Failure to State a Claim filed by Ronald Rubrecht is **MOOT**.

SO ORDERED AND ADJUDGED this the 15th day of August, 2018.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE